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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,583	08/29/2003	Daniel P. Topp	TOPP-P7.1-US	8842
21616	7590	04/14/2005	EXAMINER	
LAW OFFICES OF MARK A. GARZIA, P.C. 2058 CHICHESTER AVE BOOTHWYN, PA 19061			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/651,583

Applicant(s)

TOPP, DANIEL P.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 2-14-05 and this action is non-final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-34, 36-40, 42-44, 49 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,716,676 to Imagawa.

Referring to claims 32 and 49, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, having a first end, a second end, a left wall a right wall, a ceiling, sub-ceiling and a floor – see for example figure 2 and 6-7, the ceiling and sub-ceiling forming a plenum, the ceiling and floor being connected to the ends and walls to define an interior volume of the chamber – see for example figures 2-7, a door – proximate - a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a plenum – at the interior of A or the interior of C, delivering heated air to the interior of the chamber, the plenum being formed either

Art Unit: 3643

internal or external to the chamber in the interior of the chamber – at 12,13,22, and the ceiling communicating with the interior of the chamber – see for example figures 1-7, a means for circulating/returning air – at 10a-10d, 11a-11d and/or 22, having an inlet and an outlet, the outlet of the circulating air means connected to the inlet of the heater – see the ducting in figures 1-2, and the inlet of the circulating air means connected to the ceiling plenum – see figures 2-7, the ceiling plenum communicating with the interior of the chamber to define a continuous volume for allowing air to be moved by the circulating means through the heater into the interior of the chamber, the through the ceiling plenum and back to the circulating means, the circulating means, heating means and ceiling plenum communicating with each other in order to evenly heat/treat any products placed within the interior to a temperature lethal to pests – see for example figures 1-7 and columns 2-5.

Referring to claim 33, Imagawa discloses the means for returning air comprises a second plenum – see proximate B or B' in figures 6-7, the plenum and the second plenum cooperating with each other and with the fan – at 22, to more completely circulate the air within the interior of the chamber – see for example figures 6-7.

Referring to claim 34, Imagawa discloses the heater comprises an indirect fired heating unit – see for example column 3 lines 1-42.

Referring to claim 36, Imagawa discloses the means for circulating the air comprises a fan assembly – at 22 utilizing a fan and electric fan motor – see for example column 3 lines 20-42.

Referring to claim 37, Imagawa discloses the fan assembly – at 22 is a duct axial fan – see for example figure 2.

Referring to claim 38, Imagawa discloses the floor is reinforced to support the weight of any machinery required to load objects into or unload objects from the chamber – see for example figure 2, which shows the floor being of a significant thickness to support heavy weights.

Referring to claim 39, Imagawa discloses the heater – at 12, has an inlet for allowing the second plenum to communicate with the heater thereby directing air into the heater and an output for allowing the plenum to communicate with the heater thereby directing heated air, into the interior volume of the chamber to heat the interior volume of the chamber to heat the interior volume – see for example figures 1-7 at items 2-15.

Referring to claim 40, Imagawa discloses the heater output and input are connected to the plenum and to the second plenum respectively via ducting – see for example figures 1-7.

Referring to claim 42, Imagawa discloses a sub-ceiling – proximate 27 in figure 5 and see figures 6-7, wherein the sub-ceiling and the existing ceiling forms the plenum either internal to or external to the chamber – see for example figures 5-7.

Referring to claim 43, Imagawa discloses the means for heating – at 12,13 comprises an inlet for allowing air to be heated for make-up air as required to pressurize the interior of the chamber – see for example at item 12 in figures 1-2.

Referring to claim 44, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, defining an interior volume, the chamber having a means for lifting by external machinery – proximate 10a, 25, the chamber having first and second ends – see for example figures 1-2, a door or doors – proximate – a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for evenly heating – at 12,13, the interior of the chamber to

Art Unit: 3643

a temperature lethal to pests, the means for heating including at least one plenum – at the interior of A and/or C and a heater – at 12, all of which are located either exterior to or remotely from the chamber – at A – see for example figures 1-7 and columns 2-5.

Referring to claim 51, Imagawa discloses a control means – see for example columns 2-5.

Referring to claim 52, Imagawa discloses a primary floor – at 16,17, spaced apart from and above the floor of the chamber – see figures 1-7, the primary floor comprising a plurality of sections having perforations – see for example figures 3-7, the perforations being sized, shaped and spaced in order to communicate with the means for circulating, the heating means and the ceiling plenum to further improve and distribute heat evenly within the interior of the chamber – see for example figures 3-7 and columns 2-5.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 49 above, and further in view of U.S. Patent No. 6,141,901 to Johnson et al.

Referring to claims 35 and 50, Imagawa does not disclose the heater comprises a direct-fired heating unit. Johnson et al. does disclose the heater comprises a direct-fired heating unit –

Art Unit: 3643

see for example column 1 lines 55-56. Therefore it would have been obvious to one of ordinary skill in the art to take the pest eradicating apparatus of Imagawa and add the direct-fired heating unit of Johnson et al., so as to quickly heat the device to the desired temperature.

Claims 41 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 44 above, and further in view of U.S. Patent No. 5,965,185 to Bianco or U.S. Patent No. 6,227,002 to Bianco et al.

Referring to claims 41 and 46-47 Imagawa does not disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber. Bianco and Bianco et al. do disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber – see for example figure 2 of Bianco and figure 1 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a trailer of Bianco or Bianco et al., so as to allow for the device to be movable to different locations as desired by the user. Further making a device portable does not render the claimed invention patentable over the prior art as seen in, *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952).

Referring to claim 45, Imagawa does not disclose the chamber is a refurbished reefer box. Bianco and Bianco et al. do disclose the chamber is a box – see proximate 24 of Bianco and proximate – 190 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a box of Bianco or Bianco et al., so as to allow of the chamber to be easily moved for storage or transportation.

Art Unit: 3643

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claim 44 above, and further in view of U.S. Patent No. 3,814,315 to Dmysh. Imagawa does not disclose the chamber is a modified trailer to which the heating device is attached. Dmysh does disclose the chamber is a trailer to which the heating device is attached – see for example at items 16-18. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the trailer with attached heater of Dmysh, so as to allow for the heater to be movable to different locations.

Response to Amendment

4. The declaration under 37 CFR 1.132 filed on 2-14-05 is insufficient to overcome the rejection of claims 32-34, 36-40, 42-44, 49 and 51-52 based upon US 4,716,676 to Imagawa as set forth in the last Office action because: it is based on opinion and does not rely upon evidence or documented facts.

Response to Arguments

5. Regarding the 35 U.S.C. 102(b) rejections to the Imagawa reference US 4716676 applicant argues that the Imagawa reference does not disclose a plenum being an air filled space. As seen in figures 1-7, Imagawa discloses air filled spaces at the interiors of A-C and A'-C', in that these spaces are filled with air prior to the steam being moved into the interior spaces via item 12 and the spaces are partially filled with air when the steam mixes with the air in the interior spaces. Further, the Webster's Dictionary definition of the term "plenum" is an air-filled

Art Unit: 3643

space in a structure. Steam like air is a gas and it is the examiner's position that the device of Imagawa discloses a plenum no matter what type of gas is placed inside the plenum. The plenum in the Imagawa reference is any portion of the interior of the sections – at A-C or A'-C' as seen in figures 1-7, in that the structures at A-C and A'-C' are filled with a gas (air and/or steam) and therefore meets the dictionary definition of the term plenum. It is noted that applicant has not provided a specific definition of the term "plenum" in the disclosure.

Further, applicant argues that the Imagawa reference does not disclose a sub-ceiling and therefore a ceiling plenum in conjunction with the ceiling. As seen in either figures 1-2 or 6-7, Imagawa discloses a ceiling – at the top side of A or A' and a sub-ceiling – at 21-27 in figures 1-2 and 6-7 which constitutes the top of B and alternatively at the top of the inner chamber housing items B or B' as seen in figures 6-7. Where as seen in figures 1-2 and 6-7, a gas filled space/plenum is formed between the ceiling and sub-ceiling.

Further, applicant argues that the device of Imagawa does not disclose that the device is designed to include a plenum designed with any consideration of airflow. However, this argument only refers to the design of the Imagawa reference in view of applicant's device and does not indicate a specific claim limitation that is not disclosed by Imagawa. Applicant further relies upon the declaration under 37 CFR 1.132 to Mr. Helmes to show that the Imagawa reference does not disclose a sub-ceiling and a ceiling plenum. It is the examiner's position that the Imagawa reference does disclose the sub-ceiling and ceiling plenum as seen above and Mr. Helmes' declaration is not found to be persuasive since it is based on opinion and not specific evidence showing the deficiencies of the Imagawa reference in view of applicant's claimed invention.

Art Unit: 3643

Further, applicant's arguments rely upon Mr. Helmes' definition of the term "plenum" as used in the HVAC industry. However, applicant has not originally disclosed a specific definition of the term "plenum" and therefore it is believed that the Imagawa reference discloses a plenum given the basic dictionary definition of the term "plenum" as seen above.

Regarding claim 33, Imagawa discloses a second plenum at any one of A-C or A'-C' as seen in figures 1-2 and 6-7.

Regarding claim 34, Imagawa discloses an indirect fired heater in that the heater is fired to heat water to produce steam to heat the interior of the device.

Regarding claim 36, Imagawa discloses heating the air in the device with steam as seen in figures 1-2 and 6-7.

Regarding claim 37, Imagawa discloses a duct axial fan – at 10, 11 and 22 as seen in figures 1-2 and 6-7.

Regarding claim 38, Imagawa discloses a floor element on which the entire devices inside the chambers – at A-C and A'-C' are supported. The entirety of the device of Imagawa is deemed to be of a weight more than a forklift and therefore the Imagawa discloses a floor capable of supporting the weight of a forklift.

Regarding claim 43, Imagawa discloses outside air at the chamber – C as seen in figure 2 can be used to heat the chambers – at A and B.

Regarding claim 44, Imagawa discloses the heater – at 12 has an inlet and outlet at the pipes extending from the top of item – 12 in figure 2 and as shown in the flow arrows in figures 6-7. Further, applicant argues that the Imagawa reference does not disclose means for lifting by external machinery. As seen in figures 1-7 of Imagawa the chambers – at B or B', can be lifted

Art Unit: 3643

via forklift and the chambers – at A and C can be lifted via a crane or other type of hydraulic machinery.

Regarding claim 52, the Imagawa reference discloses multiple floors as seen in figures 1-2 and 6-7. In figures 1-2 one floor is the ground structure on which the chambers – at A and C rest and another floor is at the roller conveyor system which acts as a floor for the chamber – at B. In figures 6-7, the ground on which items A,C and A',C' rests is a first floor and the perforated piece located directly above the floor in figures 6-7 or the portion of the device on which chamber B or B' sits act as a second floor. The Imagawa reference as seen in figures 1-2 and 6-7 shows spaced openings in the floor as seen at the rollers of the conveyor in figures 1-2 and at the perforated portion directly above the ground floor as seen in figures 6-7.

Regarding the 35 U.S.C. 103(a) rejections to claims 32 and 49, applicant argues that the Johnson et al. reference US 6141901 cannot be combined with the Imagawa reference since the Imagawa reference uses a steam device and the Johnson et al. reference discloses an air heating device. However, both the Imagawa and Johnson et al. references use heat to kill the insects and therefore it is deemed appropriate to switch one type of heating device with the other.

Regarding claims 41 and 45-47, the motivation to combine the Imagawa reference with either U.S. Patent No. 5,965,185 to Bianco or U.S. Patent No. 6,227,002 to Bianco et al. is found above in paragraph 3 of this office action.

Regarding claim 48, both the Imagawa reference and the Dmysh reference US 3814315 use heating devices and it is deemed appropriate to switch one type of heating device with the other.

Art Unit: 3643

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

4/12/05